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ABSTRACT

Part of a larger effort initiated by the Children's Defense Fund through project Child Watch, a national survey was made to obtain information about the effects of deregulating day care programs. Each state licensing agency was asked to submit a copy of current day care standards and to respond to questions concerning licensing changes since 1980. Survey questions focused on the number of centers licensed, number of homes regulated and applications pending, licensing changes since 1980 and proposed changes, staff workload changes, and numbers and types of complaints received at the state level regarding child care. Included in this document is a historical overview of day care regulation, followed by a summary of responses from 49 licensing offices representing almost all states and territories. The discussion of findings focuses on problem areas resulting from the erosion of regulatory standards. Professional assessment, as proposed by the National Association for the Education of Young Children, is suggested as an addition to licensing or regulation. The licensing questionnaire is appended. (Author/RH)

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DAY CARE LICENSING: THE ERODING REGULATIONS

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DAY CARE LICENSING: THE ERODING REGULATIONS

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ABSTRACT: Day care licensing regulations are being eroded. State regulations are changing as the staff who oversee licensing at the state and local levels are cut and/or given responsibilities in addition to licensing. Nearly half the states are considering registration of day care homes. As part of Child Watch: Looking Out For America's Children, current licensing standards were examined and licensing offices of all states were queried concerning changes since 1980. The responses of 49 licensing offices are summarized. Professional assessment, as proposed by the National Association for the Education of Young Children, is suggested as an addition to licensing or registration.

DAY CARE LICENSING: THE ERODING REGULATIONS

A current, growing concern in the field of child care is the relationship between deregulation, licensing, registration, and voluntary assessment of day care programs. Deregulation as used in this report indicates policy changes and agency interpretations of policy which bring about diminution of day care regulation at the federal, state, and local levels. Licensing is the primary means of regulation currently operating and is controlled by the states. Registration is a mechanism used by the states for voluntary listing of family day homes. Assessment by professional groups provides programs with recognition for meeting standards beyond those required by licensing.

Distinctions between licensing, registration, and professional assessment are presented here to evaluate options that various states are considering as effects of deregulation become apparent. First, we provide a brief overview of the purpose of regulation and its historical significance. Then, we examine responses to questionnaires by 49 state licensing agencies and delineate the consequences of licensing changes. Finally, we suggest an addition to licensing: assessment by the profession to recognize programs that more than meet licensing standards.

Historical Overview of Regulation

Licensing of day care programs, for the most part, has served to provide a safety level of protection for young children while they were away from their families. Morgan (1977) suggested that licensing defined a "floor of quality" (p. 23). Licensing provided a means of "regulating" those programs that were inspected for health and fire code compliance and

met a diffuse set of guidelines laid out by day care licensing agents of the various states. Licensing regulations have usually been couched in terms of minimum, or least acceptable, standards usually reflecting a philosophy of preventing harm to children in day care, rather than providing exemplary care for children.

While there has been a lack of consensus, and even criticism, of government policy regulating day care, even the harshest critics agree that "children's health and safety should be safeguarded by some public regulator body" (Orton & Langham, 1980, p. 47). Beyond the issues of health and safety there is little conformity of content or form in states' delineation of day care standards, even though day care professionals readily acknowledge that day care involves much more than health and safety factors. All fifty states have day care licensing standards but states vary widely in their levels of specificity and sophistication. An example of the wide variation in standards is the strict adherence to detailed sanitation standards by some states while other states merely mention that sufficient toilet and lavatory facilities shall be available.

In order to interpret meaningfully the results of the present licensing survey an overview of the historical development of day care licensing is in order. The purposes and significance of day care licensing emerge from even a cursory study of the development of day care regulation. The purpose that regulation served is that of providing minimal safety standards in order to prevent harm to children who are cared for in day care settings. Compared to other educational or social programs, regulation came late to day care.

The social and policy forces important to day care historically include the importance of family privacy, rights of families related to their children, and the welfare tradition of day care. By 1920, most states had some form of regulation for institutions providing foster care for children. Following World War II, state standards governing institutional care of children were expanded or appended to include children in day care. The effort to modify these standards was hurried, and often the result was less than appropriate for day care needs (Class, 1980).

During the late 1960s and early 1970s, when federal funding for child care was plentiful, Federal Interagency Day Care Requirements (FIDCR) were instituted to ensure adequate standards for those programs using federal funds. FIDCR reflected the need for uniform standards across federal programs and pointed to the lack of uniformity in state standards. Since a solid national consensus did not emerge, FIDCR standards went unenforced from the time of their inception in 1968 (Zigler & Heller, 1980). The moratorium on compliance centered on staff-child ratios with the cost of care a central question (Morgan, 1980). The efforts to implement FIDCR reflected the belief among many early childhood professionals that regulations which demanded high standards could ensure quality care. Some, however, feared that federal standards could inhibit states and local communities from setting higher standards; destroy cultural differences of program philosophies; professionalize child rearing, undermining parents; result in excessive monitoring and increase costs of care (Morgan, 1977, pp. 24-25).

In an effort to ensure enforcement of some regulation for federal programs, in addition to what state licensing required, compromises in FIDCR were attempted. The "new" rules were actually a relaxation of standards regarding staff-child ratios,[1] social services, and parent participation (Friedman, 1980; Lynn, 1980). Although consensus could not be found for the compromise version of FIDCR, these relaxed standards were implemented for federally funded programs. Finally, in 1981, the regulations were eliminated (Adams, 1982).

A clear need for some form of regulation was apparent despite the fact these regulations were inadequate from the beginning and failed at the implementation stage. Increasing numbers of young children were cared for outside their own homes. Children were placed in group settings at younger and younger ages. A growing number of young children were in single parent homes, requiring the services of child care providers who were not family members.

At the very time when day care needs escalated, a policy trend toward decentralized and deregulated government involvement occurred. This trend affected the regulation of child care. Deregulation of child care failed to encounter much notice or resistance because the professional community was struggling with funding cutbacks and the cancellation of programs. Deregulation of child care prompted little notice by the public because of the broader effort of minimizing government control in areas that are traditionally under private control. Americans generally consider their children to be beyond the reach of outside agencies, except for

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[1]With the exception of ratios for infant and toddler care.

public education; therefore, many parents wish to maintain their right to select child care without interference from government control.

At the same time that FIDCR proponents admitted failure, states began systematic efforts to deregulate day care licensing. Since most efforts at enforcement of state regulations occurred already at the local rather than the state or federal level, further decentralization of day care licensing hardly seemed possible.

The move, then, toward deregulation of day care programs met with little public resistance. The apparent apathy, in part, stemmed from informal selection practices by most parents (Grotberg, 1980). The National Day Care Home Study (NDCHS) (Fosburg, 1981) found that of an estimated 1.3 million day care homes, only 137,865 of them were regulated. In subsequent analyses of these data, Stevens (1982) noted that 94% of the 5 million children in family day care in 1975 were in unregulated care. These findings are consistent with the Bush Institute estimates (Adams, 1982).

Recognizing the problem of parents' informal arrangements, critics have proposed a variety of solutions in addition to registration of homes: parental education (Travis & Perrault, 1980), greater attention to fair implementation of licensing requirements (Diamond, 1982), and a call for a national policy on children (Hoffman, 1980). Appropriate licensing and enforcement of regulation, it is argued, will provide parents with a ready means of distinguishing good care from merely custodial or mediocre care.

Thrust of Child Watch Project

In the climate of deregulation that increased during the ten year period that FIDCR was debated at the national level, states also showed a marked tendency toward leniency in both enforcement and the statement of specifics in licensing standards. In an effort to monitor the extent of changes, this study asked each state licensing agency to submit a copy of current day care standards and to respond to questions concerning licensing changes since 1980. This survey was part of a larger effort initiated by Children's Defense Fund through the project Child Watch: Looking Out for America's Children. Child Watch incorporated the efforts of ten national organizations[2] in monitoring at local levels the effects of policy changes and budget cutbacks affecting child care. Providers, parents, and knowledgeable community resource persons were contacted by Child Watch volunteers in 1982 in numerous areas of the country for documentation concerning changes in child care. As a part of the Children's Defense Fund study, 50 states, two territories, and the District of Columbia were queried about their current status in regulating child care. Forty-six states, the Virgin Islands, Puerto Rico, and the District of Columbia responded. The present report synthesizes state licensing standards and licensing changes noted by respondents.

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[2] National Organizations/Child Watch: Church Women United, United Methodist Church, Lutheran Church in America, Young Women's Christian Association, National Council of Negro Women, National Association for the Education of Young Children, League of United Latin American Citizens, Southern Rural Women's Network, Council of Jewish Federations, and Association of Junior Leagues.

Procedures

A letter was sent to each state licensing agency requesting responses to questions concerning their licensing changes since 1980. Along with the questionnaire (Table 1) went a request for a copy of current licensing standards. Questions focused on: number of centers licensed, number of homes regulated, and applications pending; licensing changes since 1980 and proposed changes; staff work load changes; and numbers and types of complaints received at the state level regarding child care. A follow-up letter was sent to those states not responding within three weeks. These requests elicited 49 responses from the 53 contacts. Attempts were made to reach the four states which had not responded by mail and by telephone.

Results

Number of centers licensed. The total number of licensed centers reported was 44,457 with an additional 3,537 licenses pending. Table 2 delineates the number in each state. From an examination of Table 2, it can be noted that the range in the number of licensed centers is from 20 (Virgin Islands) to 4800 (Texas) with a mean of 941.

The total number of homes regulated was 151,990 with an additional 5,861 licenses pending. California (26,859), Michigan (10,322), Texas (14,837), and Washington (10,500) are the states indicating the largest numbers of regulated homes. Registration is available in California, Texas, and Michigan. Of the four states with the largest numbers of homes regulated, only Washington has licensing without registration.

Changes in licensing since 1980. Thirty-four states reported changes in licensing requirements since 1980. Several states specified that changes were minor amendments for the purpose of clarification; however, the majority of states reporting changes list substantial additions or deletions to the licensing code.

Changes which respondents characterized as improvements include the following: in the area of staff requirements - staffing pattern improved, staff qualifications strengthened, staff/child ratios bettered, and staff training added; in the area of health and safety - fire extinguisher or smoke alarm required in homes, TB test for applicants, transportation (use of seatbelts), and swimming pools regulated; in the area of requirements for directors - age for operators and directors raised to 21, and experience required for operators; in the area of nutrition - improvements noted in menu planning; in the area of enforcement of regulations - $100 per day fines, financial accountability to the department imposed, affidavit and fingerprint check, report of criminal conviction, mandatory enforcement of abuse/neglect cases. States noted improvements with specific results such as the saving of family day home regulation and consumer education programs, the addition of infant regulations in four states, school age regulations in two, and making state requirements correspond to the proposed FIDCR. Six states indicated a change to include voluntary registration of family day homes.

Changes that were characterized by respondents as negative included: eliminating routine monitoring, implementing a 3 year license as opposed to the 2 year license that had been in effect, more specificity in regulations

(and therefore "nitpicking" reported), temporary reverting to 1971 standards due to litigation, elimination of after school "tolerance for ratios," omission of infant, toddler, and standards for older children, pressure for weakening standards in order to cut cost of care.

Proposed changes. Thirty-one states have proposed changes. Often changes suggested are for the purpose of improving definitions used or making language or changes coincide with other departments' changes. Other proposals include standards for programs serving handicapped children.

A number of changes relate to exemptions; specific exemptions suggested are military base programs, church sponsored progams, primarily educational programs, Title XX and IV-A programs, employer provided child care, and for food brought from home. Four states are proposing registration of family day homes. On site directors and stronger training and experience requirements for directors are proposed. Two states mentioned a relaxation of staff/child ratios. Others proposed raising the licensing fee and moving to a biennial (from an annual) license.

Complaints received. In some states, records of complaints related to licensing are not kept at the state level; however, 30 of the 49 respondents indicated an increase in the number of complaints logged since 1980 as compared with the years preceeding 1980. Only 15 agencies indicated no change in the number of complaints noted. These 15 did not report a lack of complaints, but merely no increase in the number of complaints. The source of complaints was not solicited in the questionnaire.

A marked increase in complaints relating to abuse, neglect, and inappropriate treatment was reported by 28 of the 49 states responding. Thirteen mentioned abuse, four particularly specifying sexual abuse in centers and family day homes in both licensed and unlicensed facilities. Ten linked the rise in number of complaints to lack of supervision and to instances of actual child neglect. Five noted inappropriate discipline, treatment, and punishment as problems.

Complaints concerning staff/child ratio were mentioned by seven respondents. These seven responses were tied to the above abuse-neglect-inappropriate treatment complaints.

Change in staff and workload. All respondents answered questions on staff changes and workload. Of the 49 respondents, 36 reported changes in licensing staff during the past year; 41 indicated changes in workloads.

More programs monitored by fewer licensing staff was the most often noted workload change. Changes in workloads in several cases included added responsibilities other than day care licensing.

Changes include vacancies due to budget reduction, retirements and resignations without replacement, and a freeze on hiring. Other workload changes include legislative program modifications, agency reorganization, and a shift from contracted service to agency service.

Discussion

Several problem areas are immediately evident in surveying current standards, recent changes, and proposed legislation. Although some positive changes are occurring (e.g., four states are adding infant regulations), such changes vary from state to state and few consistent positive

patterns emerge while the erosion of standards is clearly consistent throughout responses. Repeatedly, respondents noted reductions in staff, additional staff responsibilities, low priority of day care, lowering of staff-child ratios, and the replacement of the licensing of family day homes with self-registration. In view of the fact that family day care homes outnumber day care centers three to one, the move toward self-registration of homes rather than licensing is a significant change.

Exemption of military-based programs and church-related programs is under consideration in three states. The National Council of Churches reported a survey (Preschool Education, 1982), sent to 68,000 congregations. Of the 27,000 responses, 12,077 indicated that they had child care under church-sponsored programs. California, one of the states currently considering church exemption, licenses the second largest number of programs in the nation. Because significant numbers of these programs exist under church sponsorship, strong opposition to church exemption is expected.

A particular problem in examining licensing standards is the lack of consensus on nomenclature. Comparisons of specific state regulations is difficult because either terms are different or the same terms have different meanings across states. The variation in terms used may account for the significant difference in the number of "centers" reported here (44,000) and the number reported in the National Day Care Study (18,300) (Abt, 1978). The period since the National Day Care Study is concurrent with the period where increased employment of women dramatically extended

the need for child care. We speculate that there has been some increase in the number of day care programs, however, this increase hardly explains the more than twice as many centers reported four years after the National Day Care Study.

Increase in sexual abuse complaints can be attributed to increased awareness on the part of parents and the public, and to increased tensions as economic hard times affect children, but neither fully explains the "250% increase in complaints" stated by one respondent. While sexual abuse and neglect of children in licensed centers and homes is being reported in nine states, deregulation or diminishing effectiveness of the licensing process is also occurring.

An obvious regulation change is the change from licensing to registration. Adams (1982 b), in reporting the Bush Institute findings on the National Survey of Family Day Care Regulations, found that 25 states have some proposed day care legislation pending (or enacted this session) and nine states are currently undertaking a comprehensive examination of day care in the state. If the states who are considering registration and/or have registration legislation pending pass these regulations within the next year, half the states may register homes (Adams, 1982 b). Proponents of registration view voluntary registration primarily as a means of raising awareness of good care; on the other side, registration may be seen as "better than nothing."

In states that have mounted a massive public education campaign, such as Texas, the result is a large increase in the number of providers who are now "on the rolls." Virginia failed to implement registration due to a

lack of public acceptance causing Virginia to return to licensing. Registration of homes where licensing is mandatory requires a change in statute. The penalty for failure to register is a misdemeanor in some states with a fine of $50 per day; Connecticut has increased the fine to $100 a day. In Texas, a heavily funded media blitz, emphasizing the registration regulation and fine for failure to register, raised awareness of both parents and providers for the need of regulated child care. Tennessee indicated that allocations for such a campaign must be included if registration is to be instituted successfully.

Registration provides for self-evaluation of fire, safety, and environmental conditions which means attesting to such items as smoke detectors and fire extinguishers. Where licensing of homes is in effect, licensing counselors inspect for these items. Registration provides for random home visits to check for compliance (Sales, 1980). A major issue in the registration versus licensing dilemma is the number of children in a program. Registration appears to be one means of holding on to the principle of licensing at a time when deregulation threatens the licensing concept.

Powell (1980) voiced concerns of the child care profession about the need for standards within the profession. The National Association for the Education of Young Children (NAEYC) is similarly concerned and is proposing endorsement of programs meeting more than basic licensing standards. Under their proposal, licensed providers would seek evaluation voluntarily. At a time when states have various options for regulating child care or for even abandoning regulations altogether, a move by the

child care profession toward self-regulation could upgrade child care and the profession as well. Both child care and the child care profession are in dire need of upgrading. Self-regulation is a move to improve the quality of care offered children while enhancing the image of the child care profession. Professional credentialling by trained validators would provide parents a means of discerning which programs offer a program of high quality as opposed to those that are licensed or registered only. At its best, day care regulation has been a means of assuring that certain minimal standards are met. Voluntary professional accreditation can go a step beyond and ascertain the level of compliance a program has with higher standards.

Licensing and the need for standards reached its zenith with the fight for FIDCR. When those regulations proved to be unenforceable, the licensing effort lost ground. Registration may prove to be "better than nothing," as one licensing agent said, but that seems too little to offer. Self-regulation by the day care profession appears to fill an increasing need. In a field that at best is monitored poorly, the regulation of programs for young children is a concern that conscientiously cannot be ignored.

Table 1

Licensing Questionnaire
CHILD WATCH

Name_____ State_____

Title_____

1. Has there been any change in the number of complaints received by the licensing agency from parents and the community over the last several years?_____ over the past six months?_____

   Has there been any change in the nature of the complaints?_____
   Briefly describe:

   Are data compiled on the types and numbers of complaints and the disposition of those complaints?_____

2. Has there been any change in the licensing staff over the past year?
   _____ over the past six months?_____

3. Has there been any change in the work load over the past year?_____
   over the past six months?_____
   Describe briefly:

4. How many centers are now licensed?_____
   How many additional applications are pending?_____

5. How many homes are now regulated?_____
   How many applications are pending?_____

6. Have there been changes in the licensing requirements for centers since 1980?_____Family day care homes?_____
   Describe these changes (include quality changes--weaker or improved):

7. Are any changes in licensing requirements being proposed through currently filed legislation or being considered by your agency?_____
   Please describe:

TABLE 2: State Responses

	Number of Centers	Regulation of Day Care Homes	Number of Homes
Alabama	890	Licensing	2527
Alaska	109	Licensing	348
Arizona	645 *	None	1332
Arkansas	858	Licensing	465
California	4596	Licensing	26859
Colorado	600 *	Licensing	8333 *
Connecticut		Licensing	2400
Delaware	121	Licensing	510 *
District of Columbia	250	Licensing	299
Florida	3236	Licensing	1325
Georgia	1350	Voluntary	1284
Hawaii	299	Licensing	311
Idaho #		Licensing	
Illinois	2254	Licensing	8372
Indiana	654	Licensing	5000
Iowa	953	Voluntary	2567
Kansas #		Optional	3930
Kentucky	700 *	Licensing	225 *
Louisiana #		None	
Maine	116	Optional	512
Maryland	721	Licensing	5200
Massachusetts	1500 *	Registration	5100 *
Michigan	2289	Registration	10322
Minnesota	907	Licensing	9010
Mississippi #		Licensing	
Missouri	525	Licensing	1027
Montana	125	Registration	600
Nebraska	208	Registration	1545
Nevada	36	Licensing	9
New Hampshire	475	Licensing	524
New Jersey	1500	None	None
New Mexico	373	Licensing	217
New York	800 *	Licensing	6230
North Carolina	2206	Registration	6000
North Dakota	128	Licensing	878
Ohio	2000	None	N/A
Oklahoma	885	Licensing	712
Oregon	463	Registration	2229
Pennsylvania	1086	Registration	2304
Rhode Island	70	Licensing	800
South Carolina	1000 *	Optional	1020 *
South Dakota	75	Registration	800 *
Tennessee	1222	Licensing	502
Texas	4800 **	Registration	14837
Utah	138	Licensing	1500 *
Vermont	102	Licensing	160
Virginia	582	Licensing	153
Washington	1055	Licensing	10500
West Virginia	140	None	2295
Wisconsin	990	Licensing	270
Wyoming	300	Licensing	600 *
Puerto Rico	105	Licensing	42
Virgin Islands	20	Licensing	5
Totals	44,457		151,990

* Approximations

** Does not include 1200 + half-day programs

\# Information not received from state agencies

NA Information not available

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